(2) then in trust for each of my said children as shall be living;

(3) until he or she attains the age of twenty-one (21) years or being female marry under that age;

(4) and if more than one in the same proportion of shares as hereinbefore mentioned.

The effect of this would be that on the death of the testator those of the said children who survive him would take vested interests and the provision "until he attains the age of 21 years or being female marry under that age" merely postpones the passing of the possession of the interests in the gift.

If Mr. Tan is right in his submission then the only difference, in result, between provisions in the first section and second section would be that the beneficiaries would remain the same in both cases but the enjoyment of the gift in the latter case would be postponed until they reach 21 years of age or being female marry under that age. Mr. Tan further submits that the last portion of this proviso, "and if more than one in the same proportion of shares as hereinbefore mentioned", is repeated from the first section and is necessary to ensure that ratio of the division between the daughters and the son is maintained. He submits that if that last section was not included then the division between daughters and son would be on a basis of equality.

I have no hesitation in preferring the construction that Mr. Mallal puts to this paragraph 3 of the will. I take the view that the second section is introduced not to postpone the passing of the possession of the interests but to provide a destination for these gifts under certain eventualities. Here the testator quite clearly contemplates a possible set of beneficiaries which may not be the same as would result from the provisions in the first section. This to my mind more satisfactorily explains the repetition in the second section of the provisions regarding the proportion in which the daughters take in relation to the son. Let me, by way of an illustration, take the case where one of the named children of the testator survives the testator but dies before reaching the age 21 years. It would appear that this child's estate would be entitled to a share in the estate of the testator if the first section of the paragraph stood by itself without the second section but when read with the second section, then this child's estate would not be entitled to a share in the estate of the testator, because he did not live until he attained the age of 21 years.

In the above example this child at the death of the testator may even get a vested interest in the share to which he would be entitled if he lived long enough and attained the age of 21 years but on his death before attaining 21 years of age such vested interest if any would get divested. It will be observed here that the destination of the gift to this child is controlled and provided for when the child died without attaining 21 years of age.

I said earlier that I shall revert to consider the case where the clause "then in trust for each of my said children as shall be living until he or she attains the age of 21 years or being female marry under that age", could be construed as containing only one condition, namely that any of the said children who had lived to the age of 21 years would be entitled to a share in the estate irrespective of whether they were living at the death of the testator or not. It may be said such a construction is possible and this would be inconsistent with the first section for the provision for children where only living children at the testator's death would take a share. Here it has to be borne in mind that when the testator made this will and even at the testator's death (which of course was shortly thereafter) all his named children were all under 21 years and unmarried. In those circumstances if these children will have to reach 21 years they would necessarily be living at the time of the testator's death. So this inconsistency will not occur here. That being so, these considerations here do not affect the views that I had indicated earlier.

In the result the answer to the second question shall be that upon a true construction of this will the estates of Dolly Lee and Patricia Lee are not entitled to a share under this will.

I direct that the costs of all parties for this application should be taxed on the higher scale and paid out of the estate of Lee Chew Kuen, deceased.

Order accordingly.

Solicitors: *Mallal & Namazie; Tan, Rajah & Cheah; Battenberg & Talma.*

GURUBACHAN SINGH v. PUBLIC PROSECUTOR

[F.C. (Ong Hock Thye F.J., Raja Azlan Shah & Pawan Ahmad JJ.) November 21, 1967]

[Penang — Federal Court Criminal Application No. X. 6 of 1967]

Criminal Law and Procedure — Appeal to His Majesty the Yang di-Pertuan Agong — Application for leave to — Courts of Judicature Act, 1964, ss. 64, 65, 66 & 74(1)(b) or (c).

In an application for leave to appeal to His Majesty the Yang di-Pertuan Agong from the judgment of the Federal Court ([1967] 2 M.L.J. 220) it was submitted that leave should be given either under paragraph (b) or (c) of section 74(1) of the Courts of Judicature Act:—

Held: (1) leave could not be given under paragraph (b) of section 74(1) of the Act as the judgment appealed from was manifestly "final", and not an "interlocutory judgment or order";

(2) paragraph (c) had no application because the judgment appealed from involved merely the interpretation of the relevant sections in the Courts of Judicature Act, a federal law, and that law exclusively;

(3) the right of appeal under the Act extended to the Federal Court only in cases provided for by sections 64, 65 and 66 of the Act.

FEDERAL COURT.

Jag-Jit Singh and *P. K. Palasuntharam* for the applicant.

Ajaib Singh (Senior Federal Counsel) for the respondent.

Ong Hock Thye F.J. (delivering the judgment of the court): This is an application for leave to appeal to His Majesty the Yang di-Pertuan Agong from the judgment of this court given on August 7, 1967.

The applicant was convicted on October 27, 1964 in the sessions court at Alor Star under section 4(a) of the Prevention of Corruption Act 1961 and sentenced to 9 months' imprisonment, plus a fine of $446. He has since served such sentence and paid the fine. His appeal against conviction was dismissed on April 6, 1966 by the High Court at Alor Star in its appellate criminal jurisdiction.

The applicant next attempted to carry his appeal a stage further by way of an application under section 66(1) of the Courts of Judicature Act 1964. The section provides that —

"When an appeal from a decision of a lower court in a criminal matter has been determined by a High Court the judge may on the application of any party and shall on the application of the public prosecutor reserve for the decision of the Federal Court any question of law of public interest which has arisen in the course of the appeal and the determination of which by the judge has affected the event of the appeal."

When the application duly came on for hearing it turned out that the applicant had omitted to obtain from the High Court judge any certificate setting out the question of law of public interest which it was desired to reserve for the decision of the Federal Court. We accordingly extended the time within which he was required to produce the necessary certificate. The learned judge, however, was of the opinion that the case was not one in which such certificate should issue. In the result this court refused to entertain any further appeal for the reasons stated in the judgment delivered by the Chief Justice on August 7, 1967.

It is now submitted that leave to appeal to His Majesty the Yang di-Pertuan Agong should be given under either section 74(1)(b) or (c) of the Courts of Judicature Act, 1964. All that we need say about paragraph (b) is that the judgment appealed from was manifestly "final", and not an "interlocutory judgment or order."

As to paragraph (c), which relates to appeals "from any decision as to the effect of any provision of the Constitution", the short answer is that, again, in our judgment, it has no application, because the judgment appealed from involved merely the interpretation of the relevant sections in the Courts of Judicature Act, a federal law, and that law exclusively. The right of appeal, under the Act, extends to the Federal Court only in the cases provided for by sections 64, 65 and 66 of the Act.

The application is accordingly dismissed.

Application dismissed.

ATTORNEY-GENERAL v. SIM LIM INVESTMENTS LTD.

[O.C.J. (Winslow J.) November 21, 1967]

[Singapore — Suit No. 358 of 1967]

Income Tax — Statutory income — Dividend — Subsidiary company declaring — Whether parent company entitled to treat dividend declared and paid in subsequent year as having derived in preceding year — Income Tax Ordinance (Cap. 166), ss. 29, 35(7A) & 44(4).

Company Law — Dividend — Subsidiary company declaring — Accounting practice of parent company — Statutory income — Year of assessment — Income Tax — "Income from a dividend."

A subsidiary company declared a dividend in favour of its parent company on March 8, 1965. The parent company included such dividend in its accounts of the year ending December 31, 1964. The comptroller treated the dividend as having been derived in the year in which it was declared and paid i.e. 1965.

This decision gave rise to a liability under section 44(4) of the Income Tax Ordinance because, consequent thereon, there was an insufficiency of "franked" profits in respect of a dividend subsequently declared in the same year by the parent company.

In an action to recover the amount due under section 44(4) the issue before the court was whether or not the parent company was entitled to treat the dividend declared and paid in 1965 as having derived in 1964.

Held: (1) the statutory income of any person (whether an individual or a company) for any year of assessment in respect of dividends is the full amount of income from such dividends for the year preceding the year of assessment;

(2) such income must necessarily mean income from dividends already paid within the meaning of section 29 of the Ordinance.

Cases referred to:—

(1) *Whimster & Co.* v. *Commissioners of Inland Revenue* 12 T.C. 813.

(2) *Southern Railway of Peru Ltd.* v. *Owen (Inspector of Taxes)* [1957] A.C. 334.

(3) *Princes Investments Ltd.* v. *Inland Revenue Commissioners* [1967] 2 All E.R. 230.

(4) *Government of the Federation of Malaya* v. *A. Omnibus Co. Ltd.* [1963] M.L.J. 14.

The following cases were also cited in argument: *Comptroller of Income Tax* v. *B and C Co. Ltd.* [1966] 1 M.L.J. 286. *Patrick* v. *Broadstone Mills Ltd.* [1954] 1 All E.R. 163. *J. and M. Craig (Kellamaroch) Ltd.* v. *Cowperthawte* 13 T.C. 627. *F.S. Securities Ltd.* v. *C.I.R.* 41 T.C. 666. *Cenlon Finance Co. Ltd.* v. *Ellwood* 40 T.C. 176.